

AMENDED IN SENATE SEPTEMBER 7, 2007

AMENDED IN SENATE SEPTEMBER 5, 2007

AMENDED IN SENATE JULY 17, 2007

AMENDED IN SENATE JUNE 26, 2007

AMENDED IN SENATE JUNE 5, 2007

AMENDED IN ASSEMBLY APRIL 30, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1187

Introduced by Assembly Member DeSaulnier

(Principal coauthor: Senator Cogdill)

(Coauthors: Assembly Members Huffman, Krekorian, and Ruskin)

(Coauthor: Senator Cox)

February 23, 2007

An act to amend Sections 5521.5, 7370, 8254, 8371, 8436, 12006, and 12157 of the Fish and Game Code, relating to fish.

LEGISLATIVE COUNSEL’S DIGEST

AB 1187, as amended, DeSaulnier. Sturgeon: ~~striped bass: salmon:~~
~~abalone:~~ lobster: ~~black bass:~~ *Centrarchidae*: penalties.

(1) Existing law prohibits any person from taking abalone for commercial purposes in specified districts. Existing law establishes a rebuttable presumption, affecting the burden of producing evidence, that a person who is required to obtain a license to take a fish, reptile, or amphibian, and who takes or possesses more than 12 individual abalone or takes abalone in excess of the annual bag limit, possesses the abalone for commercial purposes.

This bill would repeal the rebuttable presumption that a person who takes or possesses a specified amount of abalone possesses it for commercial purposes. The bill would make the possession of specified amounts of abalone prima facie evidence that it is possessed for commercial purposes.

(2) Under existing law, except as specified, it is unlawful to buy or sell, or to offer to buy or sell, a whole sturgeon, or any part thereof, including eggs, or to possess sturgeon, or parts thereof, including eggs, in any place where fish are bought, possessed for sale, or sold, or where food is offered for sale, or in any truck or other conveyance operated by or for a place so selling or possessing fish.

Existing law prohibits the taking of lobsters for commercial purposes except under a valid lobster permit.

Existing law generally prohibits the sale or purchase of fish of the family Centrarchidae (Sacramento perch, crappie, black bass, and sunfish), other than cultured fish.

This bill, with certain exceptions, would make it unlawful to take or possess for commercial purposes, buy, or sell, or to offer to buy or sell, any whole sturgeon, or any part thereof, including, but not limited to, eggs, thereby imposing a state-mandated local program by creating a new crime. ~~The~~

The bill would make the possession of specified amounts of sturgeon or lobster prima facie evidence that it is possessed for commercial purposes.

~~This—~~*The* bill would also prohibit the taking or possession for commercial purposes of fish of the family Centrarchidae, thereby imposing a state-mandated local program by creating new crimes.

The bill would make a violation of the provisions prohibiting the sale, purchase, or possession of sturgeon for commercial purposes subject to a fine of not less than \$5,000, or more than \$10,000, or imprisonment in a county jail not to exceed one year, or both the fine and imprisonment. The bill would make a violation of the provisions prohibiting the sale, purchase, or possession of lobster subject to a fine of not less than \$5,000, or more than \$10,000, or imprisonment in a county jail not to exceed six months, or both the fine and imprisonment.

The bill would require a court to permanently revoke any commercial fishing license or commercial fishing permit, and authorize the court to permanently revoke any sportfishing license, issued to a violator by the Department of Fish and Game. The bill would authorize the seizure and forfeiture of any vessel, diving or other fishing gear or apparatus,

or vehicle used in the commission of specified offenses. The bill would provide that 50% of the revenue deposited in the Fish and Game Preservation Fund from fines and forfeitures collected pursuant to those provisions is to be allocated for the support of the Special Operations Unit of the department, and used for law enforcement purposes.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 5521.5 of the Fish and Game Code is
2 amended to read:

3 5521.5. (a) In addition to the moratorium imposed by Section
4 5521, and notwithstanding any other provision of law, it is unlawful
5 to take abalone for commercial purposes in District 6, 7, 16, 17,
6 or 19A, in District 10 north of Point Lobos, or in District 20
7 between Southeast Rock and the extreme westerly end of Santa
8 Catalina Island.

9 (b) For a person who is required to obtain a license pursuant to
10 Section 7145, the possession of more than 12 individual abalone
11 or abalone in excess of the annual bag limit is prima facie evidence
12 that the person possesses the abalone for commercial purposes.

13 SEC. 2. Section 7370 of the Fish and Game Code is amended
14 to read:

15 7370. (a) It is unlawful to take or possess for commercial
16 purposes, buy or sell, or to offer to buy or sell, any whole sturgeon,
17 or any part thereof, including, but not limited to, eggs, except as
18 follows:

19 (1) A sturgeon, or parts thereof, that is taken or possessed by,
20 and is the cultured progeny of, an aquaculturist who is registered
21 under Section 15101, may be sold or purchased subject to
22 regulations of the commission.

23 (2) A sturgeon, or parts thereof, that is taken commercially in
24 another state that permits the sale of the fish and lawfully imported
25 under Section 2363, may be possessed, sold, or purchased.

1 (3) Sturgeon, or parts thereof, taken pursuant to a sport fishing
2 license in accordance with Section 7230.

3 (b) For purposes of this section, it is prima facie evidence that
4 a sturgeon, or parts thereof, is possessed for commercial purposes
5 if the possession of sturgeon is more than two times the sport bag
6 limit.

7 SEC. 3. Section 8254 of the Fish and Game Code is amended
8 to read:

9 8254. (a) Lobsters shall not be taken for commercial purposes
10 except under a valid lobster permit issued to that person that has
11 not been suspended or revoked, subject to regulations adopted by
12 the commission.

13 (b) Every person who takes, assists in taking, possesses, or
14 transports lobsters for commercial purposes while on any boat,
15 barge, or vessel, or who uses or operates or assists in using or
16 operating any boat, net, trap, line, or other appliance to take lobsters
17 for commercial purposes, shall have a valid lobster permit.

18 (c) The permit fee for a lobster permit is two hundred sixty-five
19 dollars (\$265).

20 (d) The fee for a lobster crewmember permit is one hundred
21 twenty-five dollars (\$125).

22 (e) For the purposes of this section, it is prima facie evidence
23 that lobster is taken for commercial purposes if the possession of
24 lobster is more than three times the sport bag limit.

25 SEC. 4. Section 8371 of the Fish and Game Code is amended
26 to read:

27 8371. Striped bass or salmon, or parts thereof, may be sold or
28 offered for sale only under the following conditions:

29 (a) If the striped bass, or parts thereof, is taken or possessed by,
30 and is the cultured progeny of, an aquaculturist who is registered
31 under Section 15101, that striped bass may be sold or purchased
32 subject to regulations of the commission.

33 (b) If the striped bass, or parts thereof, is taken legally in another
34 state that permits the sale of that fish and if the fish is lawfully
35 imported under Section 2363, the striped bass, or parts thereof,
36 may be possessed, sold, or purchased.

37 (c) If the salmon, or parts thereof, is taken legally in another
38 state that permits the sale of salmon, and is lawfully imported
39 consistent with Section 2361, the salmon, or parts thereof, may be
40 possessed, sold, or purchased.

1 (d) If the salmon, or parts thereof, is taken in accordance with
2 Article 4 (commencing with Section 8210.2), the salmon, or parts
3 thereof, may be possessed, sold, or purchased.

4 SEC. 5. Section 8436 of the Fish and Game Code is amended
5 to read:

6 8436. Except as provided in Section 8436.5, fish of the family
7 Centrarchidae (Sacramento perch, crappie, black bass, and sunfish)
8 shall not be taken or possessed for commercial purposes, sold, or
9 purchased, other than fish that are cultured pursuant to Division
10 12 (commencing with Section 15000).

11 SEC. 6. Section 12006 of the Fish and Game Code is amended
12 to read:

13 12006. (a) Notwithstanding Section 12002:

14 (1) The punishment for a violation of Section 7370 is a fine of
15 not less than five thousand dollars (\$5,000), or more than ten
16 thousand dollars (\$10,000), imprisonment in a county jail not to
17 exceed one year, or both the fine and imprisonment.

18 (2) The punishment for a violation of Section 8254 is a fine of
19 not less than five thousand dollars (\$5,000), or more than ten
20 thousand dollars (\$10,000), imprisonment in a county jail not to
21 exceed six months, or both the fine and imprisonment.

22 (b) The court shall permanently revoke any commercial fishing
23 license or commercial fishing permit, and may permanently revoke
24 any sport fishing license issued to the violator by the department.
25 Any vessel, diving or other fishing gear or apparatus, or vehicle
26 used in the commission of an offense subject to this section may
27 be seized and may be ordered forfeited by the court pursuant to
28 subdivision (c) of Section 12157. Fifty percent of the revenue
29 deposited in the Fish and Game Preservation Fund from fines and
30 forfeitures collected pursuant to this section shall be allocated for
31 the support of the Special Operations Unit of the department, and
32 used for law enforcement purposes.

33 SEC. 7. Section 12157 of the Fish and Game Code is amended
34 to read:

35 12157. (a) Except as provided in subdivision (b), the judge
36 before whom any person is tried for a violation of any provision
37 of this code, or regulation adopted pursuant thereto, may, upon
38 the conviction of the person tried, order the forfeiture of any device
39 or apparatus that is designed to be, or is capable of being, used to

1 take birds, mammals, fish, reptiles, or amphibia and that was used
2 in committing the offense charged.

3 (b) The judge shall, if the offense is punishable under Section
4 12008 of this code or under subdivision (c) of Section 597 of the
5 Penal Code, order the forfeiture of any device or apparatus that is
6 used in committing the offense, including, but not limited to, any
7 vehicle that is used or intended for use in delivering, importing,
8 or exporting any unlawfully taken, imported, or purchased species.

9 (c) (1) The judge may, for conviction of a violation of either
10 of the following offenses, order forfeiture of any device or
11 apparatus that is used in committing the offense, including, but
12 not limited to, any vehicle used or intended for use in committing
13 the offense:

14 (A) Section 2000 relating to deer, elk, antelope, feral pigs,
15 European wild boars, black bears, and brown or cinnamon bears.

16 (B) Any offense that involves the sale, purchase, or possession
17 of abalone, ~~salmon, striped bass, or black bass~~ *for commercial*
18 *purposes*.

19 (C) Any offense that involves the sale, purchase, or possession
20 of sturgeon or lobster, pursuant to Section 7370 or 8254.

21 (2) In considering an order of forfeiture under this subdivision,
22 the court shall take into consideration the nature, circumstances,
23 extent, and gravity of the prohibited act committed, the degree of
24 culpability of the violator, the property proposed for forfeiture,
25 and other criminal or civil penalties imposed on the violator under
26 other provisions of law for that offense. The court shall impose
27 lesser forfeiture penalties under this subdivision for those acts that
28 have little significant effect upon natural resources or the property
29 of another and greater forfeiture penalties for those acts that may
30 cause serious injury to natural resources or the property of another,
31 as determined by the court. In determining whether or not to order
32 forfeiture of a vehicle, the court shall, in addition to any other
33 relevant factor, consider whether the defendant is the owner of the
34 vehicle and whether the owner of the vehicle had knowledge of
35 the violation.

36 (3) It is the intent of the Legislature that forfeiture not be ordered
37 pursuant to this subdivision for minor or inadvertent violations,
38 as determined by the court.

39 (d) A judge shall not order the forfeiture of a vehicle under this
40 section if there is a community property interest in the vehicle that

1 is owned by a person other than the defendant and the vehicle is
2 the only vehicle available to the defendant's immediate family that
3 may be operated on the highway with a class A, class B, or class
4 C driver's license.

5 (e) Any device or apparatus ordered forfeited shall be sold, used,
6 or destroyed by the department.

7 (f) (1) The proceeds from all sales under this section, after
8 payment of any valid liens on the forfeited property, shall be paid
9 into the Fish and Game Preservation Fund.

10 (2) A lien in which the lienholder is a conspirator is not a valid
11 lien for purposes of this subdivision.

12 (g) The provisions in this section authorizing or requiring a
13 judge to order the forfeiture of a device or apparatus also apply to
14 the judge, referee, or juvenile hearing officer in a juvenile court
15 action brought under Section 258 of the Welfare and Institutions
16 Code.

17 (h) For purposes of this section, a plea of nolo contendere or no
18 contest, or forfeiture of bail, constitutes a conviction.

19 (i) Neither the disposition of the criminal action other than by
20 conviction nor the discretionary refusal of the judge to order
21 forfeiture upon conviction impairs the right of the department to
22 commence proceedings to order the forfeiture of fish nets or traps
23 pursuant to Section 8630.

24 SEC. 8. No reimbursement is required by this act pursuant to
25 Section 6 of Article XIII B of the California Constitution because
26 the only costs that may be incurred by a local agency or school
27 district will be incurred because this act creates a new crime or
28 infraction, eliminates a crime or infraction, or changes the penalty
29 for a crime or infraction, within the meaning of Section 17556 of
30 the Government Code, or changes the definition of a crime within
31 the meaning of Section 6 of Article XIII B of the California
32 Constitution.